

IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KENNETH ALLEN NEIGHBORS,

Plaintiff,

No. CIV S-03-0329 GEB KJM P

vs.

K. NICHOLS, et al.,

Defendants.

ORDER

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Plaintiff is a state prisoner proceeding pro se and in forma pauperis with an action filed pursuant to 42 U.S.C. § 1983. On September 10, 2004, plaintiff filed an amended complaint. Under Federal Rule of Civil Procedure 15(a), plaintiff may amend his complaint once as a matter of right any time before a responsive pleading is filed. A responsive pleading has not yet been filed. Therefore, the court will screen plaintiff's amended complaint under 28 U.S.C. § 1915A(a).

Under 28 U.S.C. § 1915A(a), the court must dismiss a complaint or portion thereof if the prisoner has raised claims that are legally "frivolous or malicious," that fail to state a claim upon which relief may be granted, or that seek monetary relief from a defendant who is immune from such relief. 28 U.S.C. § 1915A(b)(1),(2).

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1 A claim is legally frivolous when it lacks an arguable basis either in law or in fact.  
 2 Neitzke v. Williams, 490 U.S. 319, 325 (1989); Franklin v. Murphy, 745 F.2d 1221, 1227-28  
 3 (9th Cir. 1984). The court may, therefore, dismiss a claim as frivolous where it is based on an  
 4 indisputably meritless legal theory or where the factual contentions are clearly baseless. Neitzke,  
 5 490 U.S. at 327. The critical inquiry is whether a constitutional claim, however inartfully  
 6 pleaded, has an arguable legal and factual basis. See Jackson v. Arizona, 885 F.2d 639, 640 (9th  
 7 Cir. 1989); Franklin, 745 F.2d at 1227.

8 A complaint, or portion thereof, should only be dismissed for failure to state a  
 9 claim upon which relief may be granted if it appears beyond doubt that plaintiff can prove no set  
 10 of facts in support of the claim or claims that would entitle him to relief. Hishon v. King &  
 11 Spalding, 467 U.S. 69, 73 (1984) (citing Conley v. Gibson, 355 U.S. 41, 45-46 (1957)); Palmer  
 12 v. Roosevelt Lake Log Owners Ass'n, 651 F.2d 1289, 1294 (9th Cir. 1981). In reviewing a  
 13 complaint under this standard, the court must accept as true the allegations of the complaint in  
 14 question, Hospital Bldg. Co. v. Rex Hosp. Trustees, 425 U.S. 738, 740 (1976), construe the  
 15 pleading in the light most favorable to the plaintiff, and resolve all doubts in the plaintiff's favor,  
 16 Jenkins v. McKeithen, 395 U.S. 411, 421 (1969).

17 Plaintiff seeks monetary and injunctive relief against employees of the Butte  
 18 County Superior Court Clerk's Office. Plaintiff claims defendants: 1) ignored or denied requests  
 19 for information or copies of documents pertaining to plaintiff's criminal proceedings pending in  
 20 Butte County; and 2) destroyed evidence without first contacting plaintiff.

21 Court personnel are entitled to absolute immunity from suits for monetary  
 22 damages arising from acts that are "an integral part of the judicial process." Mullis v. U.S.  
 23 Bankr. Court, 828 F.2d 1385, 1390 (9th Cir. 1987). A clerk's office's management of court  
 24 records and information is an integral part of the judicial process. Therefore, plaintiff cannot  
 25 seek monetary damages from defendants.

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1 With respect to injunctive relief, plaintiff asks that the court order defendants to:

2 1. Immediately provide plaintiff with all documentation from his  
3 court file which is in reference to his 1985 case known as action  
4 88320, and such material to be provided at defendants' expense;  
5 and

6 2. Immediately provide plaintiff with all documentation from his  
7 court file which is in reference to his 1995 case known as action  
8 CM-005814, and such material to be provided at defendants'  
9 expense.

10 Am. Compl. at 12:7-10.

11 A review of the court's file reveals that service of process was attempted as to  
12 defendant Caldwell. However, service was not effected because Caldwell no longer works for  
13 the Butte County Superior Court Clerk's Office. Because Caldwell is not in a position to provide  
14 the injunctive relief requested by defendant, the court will not order service of process with  
15 respect to Caldwell.

16 The court will order that defendants Nichols and Strickland be served with the  
17 amended complaint. If the allegations of the amended complaint are proven, plaintiff has a  
18 reasonable opportunity to obtain the injunctive relief he seeks based upon a violation of his First  
19 Amendment right to seek redress from the government.

20 In accordance with the above, IT IS HEREBY ORDERED that:

21 1. Service is appropriate for the following defendants: Nichols and Strickland.

22 2. The Clerk of the Court shall send plaintiff two USM-285 forms, one summons,  
23 an instruction sheet and a copy of the amended complaint filed September 10, 2004.

24 3. Within thirty days from the date of this order, plaintiff shall complete the  
25 attached Notice of Submission of Documents and submit the following documents to the court:

26 a. The completed Notice of Submission of Documents;

b. One completed summons;

c. One completed USM-285 form for each defendant listed in number 1  
above; and

1 d. Three copies of the endorsed amended complaint filed September 10,  
2 2004.

3 4. Plaintiff need not attempt service on defendants and need not request waiver of  
4 service. Upon receipt of the above-described documents, the court will direct the United States  
5 Marshal to serve the above-named defendants pursuant to Federal Rule of Civil Procedure 4  
6 without payment of costs.

7 DATED: May 11, 2005.

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10 UNITED STATES MAGISTRATE JUDGE  
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KENNETH ALLEN NEIGHBORS,

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NOTICE OF SUBMISSION  
OF DOCUMENTS

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Plaintiff hereby submits the following documents in compliance with the court's  
order filed \_\_\_\_\_:

\_\_\_\_\_ completed summons form

\_\_\_\_\_ completed USM-285 forms

\_\_\_\_\_ copies of the \_\_\_\_\_  
Amended Complaint

DATED:

\_\_\_\_\_  
Plaintiff